

No. 49229-6-II

Court of Appeals, Div. II,
of the State of Washington

In re Marriage of Ingersoll,

John Ingersoll,

Appellant,

v.

Tomi Lee Ingersoll,

Respondent.

Brief of Appellant

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1. Introduction

Without any warning or explanation, Tomi Ingersoll¹ packed up the couple's two children and left the marital home, eventually absconding to Alaska without permission of the court. Due to Tomi's unfounded allegations of domestic violence by John, the court made Tomi the temporary residential parent. After trial, the court designated Tomi as primary residential parent, even though she had admitted to multiple acts of domestic violence against John. The court also imposed restrictions on John due to past alcohol problems, without entering any findings of danger to the children.

John simply seeks to bring his children home. The trial court abused its discretion in making decisions based on untenable grounds. This Court should correct the trial court's abuse of discretion, reverse, and remand with instructions.

2. Assignments of Error

Assignments of Error

1. The trial court abused its discretion in ordering restrictions on John Ingersoll under RCW 26.09.191 when there was no evidence that John's past alcohol issues would have any impact on his ability to parent the children.

¹ For clarity, this brief will refer to the parties by their first names. No disrespect is intended.

2. The trial court erred in entering finding 3.b in the parenting plan (CP 72).
3. The trial court abused its discretion in failing to find that Tomi Ingersoll had a history of domestic violence.
4. The trial court erred in entering finding 3.a in the parenting plan (CP 71).
5. The trial court abused its discretion in designating Tomi the primary residential parent when she had a history of domestic violence.
6. The trial court abused its discretion by basing its designation of primary residential parent on the childrens' residence with Tomi under the temporary parenting plan.

Issues Pertaining to Assignments of Error

1. A trial court may impose restrictions on a parent under RCW 26.09.191 only if the court makes specific findings of harm to the children. The trial court entered a generic finding that John has an alcohol problem "that gets in the way of his/her ability to parent." There was no evidence that John's past alcohol issues would cause any harm to the children. Did the trial court abuse its discretion in imposing restrictions under RCW 26.09.191? (assignments of error 1 and 2)
2. A trial court must limit a parent's residential time and decision making authority if the parent has a history of domestic violence. The trial court found that Tomi's past acts of domestic violence toward John did not constitute a "history" under the statute. Did the trial court err in this finding and abuse its discretion in designating Tomi the primary residential parent and not limiting her residential time and decision making authority? (assignments of error 3, 4 and 5)

3. A trial court may not base its decisions in a final parenting plan on the provisions of a temporary parenting plan. The trial court based its designation of Tomi as primary residential parent in large part on the children having lived with Tomi for the past four years under the temporary parenting plan. Did the trial court abuse its discretion? (assignment of error 6)

3. Statement of the Case

John and Tomi Ingersoll were married in 2000. 1 RP 27.² They have two children, age 13 and 8 at the time of trial. *See Id.* On May 25, 2012, without any notice or explanation to John, Tomi took the children and moved into a shelter. 1 RP 54, 59-60, 118-24, 4 RP 696.

Tomi petitioned for dissolution in June 2012. 1 RP 157. Other than being served with the petition, John had no contact from Tomi or the children from May 25 until August 2012, when John learned that Tomi had taken the children to Alaska. 1 RP 127-29. Tomi had not sought leave of the court to relocate out of state. 3 RP 606, 4 RP 652.

The temporary parenting plan designated Tomi as the primary residential parent. John's visitation with the children was originally supervised due to allegations of domestic violence.

² The record includes Verbatim Reports of a pre-trial hearing on motions in limine, the six-day trial, and a post-trial hearing on presentation of final orders. The Verbatim Report of the trial is numbered in volumes, one for each day of trial. Unless noted otherwise, all citations to RP refer to the numbered trial volumes.

See 4 RP 720, 722. Supervision ended after six months. 4 RP 720. The supervisor reported positively on John's parenting during visits. 4 RP 734-35; *see* 4 RP 729-30.

3.1 John's history of alcohol use

One of the major issues at trial was John's history of alcohol use. Prior to the separation, the couple had frequent disagreements, and John would withdraw and have a beer rather than engage in the argument. 1 RP 52. He also drank heavily with friends on the weekends. *See* 3 RP 446, 448. John readily admitted to having inappropriately used alcohol in the past, and particularly as an escape from the conflicts with Tomi leading up to their separation. 1 RP 70-72. Tomi was not pleased with John's alcohol use, which became another source of conflict prior to the separation. 1 RP 113, 130, 200-01.

John enrolled himself in a group alcohol treatment program at the VA in 2015. 1 RP 98-99, 3 RP 590. John wanted to learn better coping mechanisms other than drinking. 1 RP 100. During the group treatment, John successfully reduced his alcohol consumption from 12 drinks per week to 0-2 drinks per week. 3 RP 448-49. After completing a 12-week individual alcohol treatment program, John participated in individual, general counseling that helped him cope with stress and negative behaviors. 1 RP 100-02, 3 RP 592.

The Guardian Ad Litem, James Cathcart, reviewed reports from 2013 that reflected John's pre-separation issues with alcohol abuse. 3 RP 446, 448. Based on those reports, Cathcart recommended that John be required to have ongoing alcohol treatment, random testing, and no consumption. 3 RP 450. Cathcart acknowledged that John had reduced his alcohol consumption since the separation. 3 RP 448-49. He did not testify to any likely harm to the children from John's alcohol use. *See* 3 RP 447-53. In fact, Cathcart testified, "I do not believe that the children are at risk with John." 3 RP 478.

Witnesses to John's post-separation visits with the children testified that John was never intoxicated when the children were around. 4 RP 734, 736; 5 RP 870. Cathcart testified that none of the information that he relied on, taken together or separately, supported a finding that John's parenting would be harmful to the children. 3 RP 515-16.

3.2 Tomi's history of domestic violence

Another major issue at the trial was domestic violence. The court heard testimony about three major incidents of violence by Tomi against John.

3.2.1 Tomi threatened to kill John with kitchen knives.

John testified that he and Tomi had an argument about John not mowing the lawn. 3 RP 573. Their daughter (then one

year old) was crawling in the hallway. *Id.* Tomi was upset and started throwing ceramic plates and cups around the kitchen. *Id.* John picked up the child. *Id.* Tomi started to try to hit John, striking him on the back. *Id.* Tomi drew two kitchen knives and threatened to kill John. 3 RP 573-74. John pled with her to put down the knives. 3 RP 574. She put them down and left the house. *Id.* John called the police to make sure his side of the story was heard. 3 RP 575. Tomi was arrested, but John convinced the prosecutor not to file charges. 3 RP 575-76.

Tomi testified that she was preparing to take their daughter to California to visit Tomi's sister. 1 RP 208. She testified that John grabbed the child from Tomi's arms and said they could not go. 1 RP 209. Tomi tried to get the child back, then went out to the kitchen. 1 RP 210. Tomi testified that John followed her into the kitchen, telling her that she could not get the child from him. *Id.* Tomi grabbed a kitchen knife and threatened to kill John if he did not give her the child. 1 RP 211. She also threatened to kill herself. *Id.* At that point, she realized that she was out of control, put the knife down, and went to her neighbor's house. *Id.* John called the police. 1 RP 212. Tomi was arrested, but no charges were filed. *Id.*

The day after the incident, Tomi told John's parents about it. 5 RP 861; 6 RP 940. She told them she was angry with John because he wasn't mowing the lawn the way she wanted. 5 RP

861. When John picked up the child, Tomi threw dishes and then pulled knives on him. *Id.*

3.2.2 Tomi attacked John in the bathroom.

John testified that he and Tomi had just returned from a walk. 3 RP 576. Tomi was measuring John for a new vest and made comments about John's chest that made John feel insulted. 3 RP 576-77. John decided to go take a shower alone. 3 RP 577. Tomi kicked open the door, breaking the door frame and bending the towel rack. *Id.* John stepped out of the shower, and Tomi "hammer-fist punche[d]" John in the chest, leaving bruises. *Id.* John grabbed her arms and told her to stop. *Id.* Tomi retreated to the bedroom and started throwing things at John. *Id.* Eventually, Tomi calmed down and said she either needed to go to jail or a mental hospital. 3 RP 577-78.

Tomi testified that John was mad because of the comment she had made. 1 RP 206. When she heard the shower running, she was angry because John was showering by himself. *Id.* She kicked in the bathroom door. *Id.* Tomi testified that John jumped out of the shower and grabbed her arms. *Id.* Tomi "pummeled him" on the chest until he let go. 1 RP 207.

3.2.3 Tomi choked John at a family gathering.

John testified that the family was having dinner at John's parents' house. 3 RP 579. Tomi's brother was there. *Id.* Tomi had

been upset during dinner. *Id.* John gave Tomi's brother a hug as everyone was about to leave. *Id.* John hugged his father. *Id.* Suddenly, Tomi came over and "went straight for my throat and squeezed it." *Id.* John said, "What are you doing; I've arrested people for less than that." *Id.* Tomi left the house and didn't come back until three hours later. 3 RP 579-80.

Tomi testified that John was "messing with" and "grabbing" her brother. 1 RP 207. Tomi testified that she tried "to just gently push [John] away from my brother ... and somehow or another ... my arm, which was initially across [John's] chest, was up, and then [John] claimed that I was choking him." 1 RP 208.

John's parents testified that Tomi had been upset throughout the dinner. 5 RP 858; 6 RP 941. After the meal, John and Tomi's brother gave each other a "man hug," John gave his father a "man hug," and then Tomi, "out of nowhere—it was like a cobra strike—grabbed John's throat for about a two or three second time and strangled him." *Id.*; 6 RP 942. Tomi left the house and was gone for a few hours until the family found out she was hiding away at the Lakewood McDonald's. 5 RP 859; 6 RP 943.

3.3 Trial court's findings and conclusions

The final parenting plan included the following findings:

3. Reasons for putting limitations on a parent (under RCW 26.09.191)

a. Abandonment, neglect, child abuse, domestic violence, assault, or sex offense. ...

Neither parent has any of these problems requiring a limitation on parenting time.

b. Other problems that may harm the children's best interests. ...

A parent has one or more of these problems as follows (check all that apply):

Substance Abuse – (Parent's name): **John Ingersoll** has a long-term problem with drugs, alcohol, or other substances that gets in the way of his/her ability to parent.

CP 71-72 (bold and italic emphasis in original). The court also found, "John Ingersoll's long term problem with alcohol includes or influences behavior requiring psychological evaluation and treatment." CP 81-82.

The parenting plan then imposes restrictions on John, including limited contact with the children under the Parenting Time Schedule, which contact would be entirely suspended unless John provided documentation of compliance with evaluation and treatment requirements. CP 72. The court ordered John to abstain completely from all use of alcohol, enroll in a one year random urinalysis program, and enroll in

counseling therapy with a licensed psychologist to address issues including alcohol dependence. *Id.*

The trial court indicated that both parties had credibility issues. 6 RP 1023. The trial court could not accept Tomi's testimony about domestic violence when "she's smiling and laughing while she's trying to tell me that she's afraid." 6 RP 1024. The court also noted that the first Guardian Ad Litem observed in 2013,

In our first interview, when Tomi described John's behavior to me, she used the word "afraid," however her voice did not match her words; *i.e.*, I did not detect fear in her voice. When we spoke face to face concerning John, I did not see fear in her demeanor or verbiage when speaking of John. She was very matter of fact in her descriptions and not at all like someone who is afraid.

6 RP 1035.

Regarding residential placement of the children, the trial court stated,

So while, on the one hand, the Court is not supposed to be looking at a temporary order in entering a final parenting plan, one can't help but look at the circumstances that have existed for four years. The children have lived primarily with Mom, and they've lived in Alaska, so they've had a long distance relationship with their father for four years. That makes it very difficult for the Court to ... then say, Well, Dad would then become the primary residential parent.

6 RP 1026.

Regarding John's alcohol use, the trial court stated, "Mr. Ingersoll, I think, clearly, by a preponderance of the evidence, if not by a greater burden, has an alcohol dependency issue, and we're going to impose a .191 factor and the recommendations with respect to that." 6 RP 1036-37. The court did not say anything about how or whether it believed that John's alcohol use would interfere with John's parenting or cause likely harm to the children. The court noted that the testimony of Cathcart (GAL) and O'Connell (who supervised John's visits in the early stages) "was all very positive" about John's parenting. 6 RP 1038.

During a hearing on presentation of final orders, John objected to the court's finding in 3.b, on the grounds that "the Court did not make a finding that any alcohol or drug use interfered with Mr. Ingersoll's parenting." RP, June 15, 2016, at 21. The trial court noted that it adopted the finding because it was the pattern language of the form to justify the restrictions. RP, June 15, 2016, at 22.

4. Summary of Argument

The trial court abused its discretion in imposing restrictions on John under § 191(c)(3). The trial court failed to find any specific danger to the children to support the

restrictions. The trial court's general finding is not supported by substantial evidence. The trial court abused its discretion in failing to find that Tomi had engaged in a history of domestic violence, when she admitted to threatening to kill John with a kitchen knife and other acts of assault. The trial court abused its discretion in designating Tomi as primary residential parent when she should have been restricted under § 191. The trial court also abused its discretion in designating Tomi as primary residential parent on the basis of the temporary parenting plan.

This Court should reverse the parenting plan, including the § 191 restrictions against John in Parts 4-5 and 8-11 and the findings of fact in Parts 3.a, 3.b and 16. This Court should remand to the trial court for entry of new findings supported by the evidence, imposition of § 191 restrictions against Tomi, designation of John as primary residential parent, and reconsideration of the Parenting Time Schedule.

5. Argument

5.1 This court reviews parenting plan decisions for abuse of discretion.

A parenting plan is reviewed for abuse of discretion. *In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644 (2014). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable

reasons. *Id.* The trial court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard. *In re Marriage of Pennamen*, 135 Wn. App. 790, 797, 146 P.3d 466 (2006).

Although the trial courts have broad discretion in crafting a parenting plan, “that discretion must be exercised within the bounds of the applicable statutes.” *Chandola*, 180 Wn.2d at 658. “The court must base its decision on the correct standard and correctly apply that standard to facts, which in turn must be supported by the record.” *Pennamen*, 135 Wn. App. at 797. The trial court’s findings of fact must be supported by substantial evidence—that is, “evidence sufficient to persuade a fair-minded person of the truth of the matter asserted.” *Chandola*, 180 Wn.2d at 642.

5.2 The trial court improperly imposed restrictions on John under RCW 26.09.191 when there was no evidence that John’s past alcohol issues would cause any harm to the children.

Under RCW 26.09.191(3), a trial court may impose restrictions on a parent under specific conditions. The statute provides,

A parent’s involvement or conduct may have an adverse effect on the child’s best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

...

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse **that interferes with the performance of parenting functions;**

RCW 26.09.191(3) (emphasis added). A trial court can only impose restrictions on the parent if it finds that the parent's impairment poses a specific danger to the children and that finding is supported by substantial evidence. Here, the trial court made only a boilerplate finding that John's alcohol use "gets in the way of his/her ability to parent." This finding is insufficient as a matter of law and is not supported by substantial evidence in the record. This Court should reverse the restrictions and remand to the trial court to reconsider the parenting schedule.

5.2.1 A court cannot impose restrictions under RCW 26.09.191 without a finding that the impairment will cause specific harm to the children.

The language of RCW 26.09.191(3) must be interpreted in light of the statement of policy found in RCW 26.09.002.

Chandola, 180 Wn.2d at 648. "The best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or *as*

required to protect the child from physical, mental, or emotional harm.” RCW 26.09.002 (emphasis added).

Our supreme court has concluded from the statutory language that a trial court can impose RCW 26.09.191(3) restrictions “only where necessary to protect the child from physical, mental, or emotional harm.” *Chandola*, 180 Wn.2d at 648. The court can only impose restrictions where substantial evidence shows that there is a danger of serious harm to a child’s physical or emotional well-being. *Id.* at 645, 647. The trial court must make a particularized finding identifying specific harms to the child before ordering restrictions under § 191(3). *Id.* at 646, 656. The trial court must enter detailed findings supporting and providing the basis for its decision. *In re Marriage of Underwood*, 181 Wn. App. 608, 613, 326 P.3d 793 (2014).

Specifically, RCW 26.09.191(3)(c) requires the trial court to enter detailed findings supporting a conclusion that a long-term impairment resulting from drug, alcohol, or other substance abuse interferes with the performance of parenting functions in a manner that poses a serious danger to a child’s physical, mental, or emotional well-being. Evidence that a parent has a drinking habit is insufficient without additional evidence of a danger to the child. *See Thompson v. Thompson*, 56 Wn.2d 683, 685, 355 P.2d 1 (1960).

5.2.2 The trial court's boilerplate finding that John's alcohol use "gets in the way of his/her ability to parent" is insufficient as a matter of law.

Here, the trial court did not make any particularized or detailed findings regarding John's alcohol use. Based on John's historic alcohol abuse, the trial court found that John had an alcohol problem. 6 RP 1036. But the trial court did not make any findings that John's alcohol abuse was ongoing or that it was likely to pose a danger to the children. Instead, the court generically found, "John Ingersoll has a long-term problem with drugs, alcohol, or other substances that gets in the way of his/her ability to parent." CP 72. The trial court admitted that this finding was boilerplate intended to mirror the language of the statute. RP, June 15, 2016, at 22.

Because the finding was boilerplate, it is insufficient as a matter of law. The case law on RCW 26.09.191(3) requires detailed, particularized findings identifying specific, serious danger to the child from the parent's impairment. This boilerplate finding falls far short of that standard. The trial court's oral ruling does not provide any additional insight. The trial court did not identify any specific danger to the children from John's alcohol use.

Because the trial court did not make detailed, particularized findings identifying specific, serious danger to the children, this Court should reverse the § 191 restrictions

imposed on John in Parts 4, 5, and 8-11, and remand to the trial court to reconsider the Parenting Time Schedule and other provisions of the parenting plan.

5.2.3 The trial court's finding is not supported by substantial evidence.

Even if this Court determines that the trial court's finding is sufficiently detailed, it is not supported by substantial evidence in the record. The trial court itself noted that the testimony "was all very positive" about John's parenting. 6 RP 1038.

Mr. Cathcart, the guardian ad litem, testified that none of the experts or the reports that he relied on, taken together or separately, support a finding that John's parenting would be harmful to the children. 3 RP 515-16. Although he recommended restrictions, he did not identify any serious risk of harm to the children from John's alcohol use. To the contrary, Mr. Cathcart specifically stated, "I do not believe that the children are at risk with John." 3 RP 478.

Ms. O'Connell, who supervised John's visits with the children in the early stages of this case, reported positively on John's parenting during visits. 4 RP 734-35; *see* 4 RP 729-30. John was never intoxicated during visitation with the children. 4 RP 734, 736; 5 RP 870.

There was no evidence presented to the trial court of any specific, serious danger to the children's well-being from John's alcohol use. Even if Tomi's testimony that John yelled and spanked the children when he was drunk (1 RP 201) is to be believed (and the trial court tended not to believe this kind of testimony from her, 6 RP 1024), yelling and spanking do not rise to the level of a serious danger to the children's physical or emotional well-being. The evidence presented to the trial court was insufficient to convince a fair-minded person that John's reduced alcohol use posed a serious risk of harm to the children.

This Court should reverse the § 191 restrictions imposed on John in Parts 4, 5, and 8-11, and remand to the trial court to reconsider the Parenting Time Schedule and other provisions of the parenting plan.

5.3 The trial court improperly designated Tomi as the primary residential parent.

When ordering a parenting plan, the trial court must consider the factors listed in RCW 26.09.187(3) and the limitations mandated in RCW 26.09.191. The court must consider these factors on the record, either in written findings or in the court's oral ruling. *See Murray v. Murray*, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981).

The court shall make residential provisions for each child which encourage each parent to maintain a

loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs and developmental level of the child;
- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

RCW 26.09.187(3). Where a parent has engaged in “a history of acts of domestic violence as defined in RCW 26.50.010(1)³ or an assault or sexual assault which causes grievous bodily harm or the fear of such harm,” the parent’s decision making authority and residential time with the children must be limited. RCW 26.09.191(1) and (2)(a). Such a mandatory limitation suggests that a parent who is limited under § 191 should not be designated as the primary residential parent.

5.3.1 The trial court’s conclusion that Tomi had not engaged in domestic violence was contrary to law and not supported by substantial evidence.

The trial court expressly found that neither parent had engaged in domestic violence. This finding was contrary to law and was not supported by substantial evidence.

The statutory language, “a history of domestic violence” means what it says. *In re Marriage of Caven*, 136 Wn.2d 800, 807-08, 966 P.2d 1247 (1998). “Domestic violence” means, for purposes of § 191, “Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members.” RCW 26.50.010(3). Thus, “a history of domestic violence” would mean a pattern of multiple instances of physical harm, bodily injury,

³ RCW 26.50.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (3).

assault, or the infliction of fear of the same. Alternatively, restrictions are also required if a parent commits a single “assault or sexual assault which causes grievous bodily harm or the fear of such harm.” RCW 26.09.191.

Tomi admitted to at least two instances of assault resulting in physical harm or the fear of imminent physical harm against John. She admitted to pulling a kitchen knife and threatening to kill John. 1 RP 211. She admitted to pummeling John’s chest, an assault that left bruises. 1 RP 207; 3 RP 578. While she did not admit to choking John, her denial was not credible. *See* 1 RP 208. Other witnesses corroborated John’s version of events, noting that Tomi struck “like a cobra” and choked John’s neck for two to three seconds. 5 RP 858; 6 RP 942. Even though Tomi’s brother was a witness to the incident, Tomi did not produce him to testify. These three incidents constitute “a history of domestic violence” as defined by the statute. Alternatively, either the knife incident or the choking incident, alone, would qualify as “assault ... which causes grievous bodily harm or the fear of such harm,” under the second prong of the statute.

Because Tomi admitted to at least two of these incidents, the trial court’s finding that she had not engaged in domestic violence is not supported by substantial evidence. The unchallenged evidence is that Tomi threatened to kill John with

a kitchen knife and engaged in other acts of domestic violence under the statutory definition. The trial court abused its discretion when it failed to find that Tomi had engaged in domestic violence. Tomi's history of domestic violence required restrictions under § 191 and should have disqualified her from being designated primary residential parent. This Court should reverse and remand to the trial court to impose restrictions under § 191, including designating John as the primary residential parent with sole decision making authority.

5.3.2 The trial court improperly based its decision on the children's residing with Tomi for four years under the temporary parenting plan.

In crafting a parenting plan, the trial court "shall not draw any presumptions from the provisions of the temporary parenting plan." RCW 26.09.191(5). In *In re Marriage of Kovacs*, 121 Wn.2d 795, 809, 854 P.2d 629 (1993), the Supreme Court held the Parenting Act "did not intend to create any presumption in favor of the primary caregiver but, to the contrary, intended to reject any such presumption." To the extent a trial court applies a presumption in favor of the temporary residential parent, it is not based on tenable reasons and is an abuse of discretion. *In re Marriage of Combs*, 105 Wn. App. 168, 176-77, 19 P.3d 469, 473 (2001).

Here, the trial court's decision to designate Tomi as the primary residential parent was based almost entirely on Tomi's success as the residential parent under the temporary parenting plan. Regarding residential placement of the children, the trial court stated,

So while, on the one hand, the Court is not supposed to be looking at a temporary order in entering a final parenting plan, one can't help but look at the circumstances that have existed for four years. The children have lived primarily with Mom, and they've lived in Alaska, so they've had a long distance relationship with their father for four years. That makes it very difficult for the Court to ... then say, Well, Dad would then become the primary residential parent.

6 RP 1026. The court's blatant reliance on Tomi's time as temporary residential parent was an abuse of discretion. This Court should reverse the designation of primary residential parent and remand to the trial court for reconsideration of the statutory factors.

6. Conclusion

The trial court abused its discretion in imposing restrictions on John under § 191(c)(3). It abused its discretion in failing to find that Tomi had engaged in a history of domestic violence. It abused its discretion in designating Tomi as primary residential parent.

This Court should reverse the parenting plan, including the § 191 restrictions against John in Parts 4-5 and 8-11 and the findings of fact in Parts 3.a, 3.b and 16. This Court should remand to the trial court for entry of new findings supported by the evidence, imposition of § 191 restrictions against Tomi, designation of John as primary residential parent, and reconsideration of the Parenting Time Schedule.

Respectfully submitted this 9th day of January, 2017.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on January 9, 2017, I caused the original of the foregoing document to be filed and served by the method indicated below, and addressed to each of the following:

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DATED this 9th day of January, 2017..

/s/ Rhonda Davidson

Rhonda Davidson, Legal Assistant
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Case Name: Ingersoll v. Ingersoll

Court of Appeals Case Number: 49229-6

Is this a Personal Restraint Petition? Yes ☐ No ☒

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